IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Tax Appeal No. 42137 of 2013

(Arising out of Order-in-Original No. 21511/2013 dated 12.8.2013 passed by the Commissioner of Customs (Seaport – Import), Chennai)

M/s. Shami Impex **Appellant**
Plot No. 2, Numbal Village Road
Numbal Village
Thiruverkadu, Chennai – 600 077.

Vs.

Commissioner of Customs **Respondent**
Chennai II Commissionerate
Custom House, No. 60, Rajaji Salai
Chennai – 600001.

With

Customs Tax Appeal No. 42138 of 2013

(Arising out of Order-in-Original No. 21511/2013 dated 12.8.2013 passed by the Commissioner of Customs (Seaport – Import), Chennai)

Shri B. Kamlesh Gupta **Appellant**
M/s. Shami Impex
Plot No. 2, Numbal Village Road
Numbal Village
Thiruverkadu, Chennai – 600 077.

Vs.

Commissioner of Customs **Respondent**
Chennai II Commissionerate
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

Customs Tax Appeal No. 42139 of 2013

(Arising out of Order-in-Original No. 21511/2013 dated 12.8.2013 passed by the Commissioner of Customs (Seaport – Import), Chennai)

Shri S. Dhiraj Gupta **Appellant**
No. 359, Vinayaka Apartments
4th Main Road, MKB Nagar
Chennai – 600 118.

Vs.

Commissioner of Customs **Respondent**
Chennai II Commissionerate
Custom House, No. 60, Rajaji Salai
Chennai – 600001.

Customs Tax Appeal No. 42140 of 2013

(Arising out of Order-in-Original No. 21511/2013 dated 12.8.2013 passed by the Commissioner of Customs (Seaport – Import), Chennai)

Mamta Gupta, Partner **Appellant**
M/s. Shami Impex
Plot No. 2, Numbal Village Road
Numbal Village
Thiruverkadu, Chennai – 600 077.

Vs.

Commissioner of Customs **Respondent**
Chennai II Commissionerate
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

And

Customs Tax Appeal No. 42141 of 2013

(Arising out of Order-in-Original No. 21511/2013 dated 12.8.2013 passed by the Commissioner of Customs (Seaport – Import), Chennai)

Gowrishankar, Partner **Appellant**
M/s. Shami Impex
Plot No. 2, Numbal Village Road
Numbal Village
Thiruverkadu, Chennai – 600 077.

Vs.

Commissioner of Customs **Respondent**
Chennai II Commissionerate
Custom House
No. 60, Rajaji Salai
Chennai – 600001.

APPEARANCE:

Shri S. Murugappan, Advocate for the Appellant
Shri Anoop Singh, JC (AR) for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order Nos. 40819 to 40823/2024

Date of Hearing : 03.04.2024
Date of Decision: 09.07.2024

Per M. Ajit Kumar,

These appeals are filed against common Order in Original No. 21511/2013 dated 12.8.2013 passed by the Commissioner of Customs, Seaport – Import, Chennai (impugned order).

2. Brief facts of the case are that M/s. Shami Impex, one of the appellants herein was engaged in the import of reprocessed LDPE / HDPE granules and HDPE agglomaterial from various overseas suppliers. Shri S. Gowrishankar and Smt. Mamta Gupta were the partners of the said entity. Directorate of Revenue Intelligence (DRI), Chennai gathered intelligence that various importers of LDPE reprocessed granules were resorting to undervaluation of their imports and that such clearances were effected through Chennai Seaport. On scrutiny of the import data, it appeared that the import value declared by IEC holder M/s. Shami Impex, of LDPE/ HDPE reprocessed granules /HDPE Agglomaterial were grossly undervalued. Further intelligence was gathered and one more firm M/s. Radha Enterprises importing the said goods in the same manner as of M/s. Shami Impex was noticed. Mrs. Mamta Gupta, partner of M/s. Shami Impex is the aunt of Shri S. Dhiraj Gupta, proprietor of M/s. Radha Enterprises. Her husband Shri B. Kamlesh Gupta who was an employee of M/s. Shami Impex was the paternal uncle of the said Shri S. Dhiraj Gupta. Based on the searches done and statements recorded from the appellants, Show Cause Notice (**SCN**) was issued for rejecting the assessable value and proposing demand of differential duty under sec. 28 of the Customs Act, 1962 along with penalties under sections 112(a) and 114AA of the CA 1962, for the BE's filed during the period from 04/2007 to 08/2009. After due

process of law, the adjudicating authority confirmed the proposals in the Show Cause Notice. Hence the appellants are before this Tribunal.

3. Shri S. Murugappan, learned counsel appeared for the appellants and Shri Anoop Singh, learned Joint Commissioner (AR) appeared for the respondent.

3.1 The Ld. Counsel for the appellant submitted that M/s. Shami Impex is engaged in import of various plastic products including reprocessed LDPE/HDPE granules. Pending examination of the correctness of the values declared for the import of regenerated LDPE/HDPE granules, the Bill's of Entry (**BE**) were provisionally assessed in terms of section 18 of The Customs Act 1962 (**CA 1962**). Pending finalization of the BE, investigations were made, searches conducted and statements were recorded by DRI from Mr.Kamlesh Gupta and Mr. Dhiraj Gupta. After completion of investigation a SCN dated 30.05.2011 was issued demanding differential duty on account of alleged misdeclaration of values of the imported goods. In respect of consignments covered under Annexure I to the SCN duty of Rs.57,80,508 was demanded under section 28 of CA 1962. In respect of consignments covered under Annexure II duty of Rs. 63,47,832 was similarly demanded. The notice proposed confiscation of the goods and also imposition of penalties on the firm as well as others. Before the appellants could examine all the relied upon documents and provide a detailed reply and while they were seeking for more time to attend the personal hearing, the matter was adjudicated ex parte by the respondent confirming the demand etc. and the same is in violation of Principles of Natural Justice. Their request for an extended date for PH, for approaching the Settlement Commission, was not considered. Besides goods were confiscated and penalties were imposed on the firm as well as others. The learned Counsel stated that since the goods were provisionally assessed there was no basis for confiscating them and imposing redemption fine and penalties. When the assessment of Bills of Entry is provisional, it is to be considered as 'provisional' for all purposes of assessment and not just for the purpose for which Bills of Entry were provisionally assessed. To support his argument, the Ld. counsel relied on the decision in the case of **Commissioner of Customs, Chennai Vs. Volvo India Pvt. Ltd**. [2019 (365) ELT 802 (Mad.)] and **Denso Haryana Pvt. Ltd. Vs. Commissioner of customs, New Delhi** [2004 (176) ELT 548 (Tri.-Del.)]. He further place reliance on the case of the Supreme Court judgement in the case of **Commissioner Vs ITC Limit**ed [2006 (203) E.L.T 532 (S.C.)] and **Lan Esenda Ltd Vs Commissioner** [2005 (192) E.LT 305 (Tri.-Mum.)]. In respect of imports covered by seven bills of entry referred to in Annexure 1, he submitted that those imports were under Indo Srilanka Free Trade agreement and the values declared for these goods were certified as correct by the Sri Lankan Ministry of Commerce. Hence in respect of these seven bills there is no basis to make any demand. The amount demanded was Rs.2,14,963/-. For Bills of Entry No. 64173 dated 17.1.2008 and No. 678146 dated 25.2.2008 the show cause notice refers to supporting evidence in terms of Rule 4 of valuation Rules. However, no such evidence has been enclosed to the notice. Thus, this demand to the extent of Rs.3,76,848/- is not tenable. He stated that there are certain glaring omissions like repetition of entries, adoption of wrong values and the citation of invoices with dates later than the shipment date. On account of all these the extra demand made comes to Rs.21,08,501/-. The learned counsel stated that the impugned order was issued without any legal basis even at a time when they wanted to cooperate with the department and had deposited an amount of Rs.37,12,364/- to buy peace of mind and complete the assessment. The impugned order hence merits to be set aside.

3.2 The Ld. AR submitted on behalf of revenue that the claim made by the appellant that the Original Authority proceeded to adjudicate their matter ex parte and the same is in violation of Principles of Natural Justice is not correct. None of the noticees' submitted their final reply nor attended any of the four opportunities for PH given to them. There is nothing on record to suggest that the matter has ever been dealt/ admitted by Settlement Commission. Even the issue before Settlement Commission is related to their sister concern M/s Radha Enterprises and not relating to the SCN issued to M/s Shami Impex. Further with regard to the issue of raising demand in terms of Section 28 and confiscation of goods under Section 111 of the CA 1962 in respect of provisionally assessed goods under Section 18, he fairly conceded that a similar issue has been discussed by a Coordinate Bench of this Tribunal in **M/s. Shell India Markets Private Limited Vs Commissioner of Customs, Chennai** [2024 (3) TMI 1189 - CESTAT CHENNAI] and a host of other judgments of High Courts cited by the appellant, to hold that when the assessment is only provisional, the SCN issued under section 28 of CA 62 is not maintainable. The Ld. AR stated that however the facts of the case inter-alia involve irregularities like the issuance of invoices showing lesser prices for under declaring the value to the Customs; issuance of switch Bills of Lading to hide the actual Suppliers; payment of differential amount over and above the Invoice Value through other than banking channels; differences in the value mentioned in the Load Port Invoice vis-à-vis fabricated Invoices submitted to Indian Customs for the purpose of payment of lesser duty etc. These facts have been collaborated in the statements of concerned persons recorded under Section 108 of the Customs Act,1962. Once these facts are admitted they need not be proved again. He placed reliance upon following decisions in the case of **K I Pavunny [1997 (90) ELT 241 (SC)], Govindasamy Ragupathy [1998 (98) ELT 50 (Mad)], Chandra Impex Pvt Ltd [2008 (224) ELT 583 (T-Del)], Sidharth Shankar Roy [2013 (291) ELT 244 (T-Mum)]** and stated that as per Hon'ble Supreme Court judgment fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. Tribunal, Mumbai also in the case of **Saccha Saudha Pedhi vs. Commissioner of Customs (Import), Mumbai** reported as [2015 (328) ELT 609 (Tri-Mumbai) has held that once the witnesses admitted to under valuation and accepted actual price of imported goods mentioned in the purchase orders / messages of supplier, then the said admitted price becomes transaction value in which case, there is no need to resort to contemporaneous import. He reiterated the points given in the impugned order and prayed that in the circumstances, the appeal may be rejected and the order upheld.

4. We have carefully gone through the facts of the case and have heard the rival parties. We find that this is a case where the appellant is alleged to have imported LDPE reprocessed granules by undervaluing the same. The BE's were assessed provisionally at the time of the imports. The question is whether (a) in such a situation a notice to finalise the assessment and demand duties etc. can be issued under section 28 of CA 1962 (revenue) or under section 18 ibid (appellant)? (b) Whether the involvement of fraud and collusion would justify the SCN issued under section 28 of CA 1962 along with invoking provision for confiscation and penalties.

5. We find that the BE's were filed prior to 08-04-2011 i.e. before Self-Assessment of customs duties had become the norm. The department instead of finalising the assessment of the provisionally assessed goods under section 18, has sought to straight away demand duties under section 28 of CA, 1962 as it stood at the relevant time. Section 28 provided for recovery of duty which had not been levied or had been short levied or erroneously refunded etc, provided a notice demanding such duties/ refund was issued within the time limit specified in the said section. "Relevant date" for issue of notice had been defined in the section to mean, in a case where duty is provisionally assessed under section 18 ibid, the date of adjustment of duty after the final assessment thereof. Hence it is only when after final assessment, it is found that there has been a short-levy or non-levy of duty etc., the Proper Officer is empowered to initiate proceedings under section 28. In such a case, limitation period will run from the date of

the final assessment. The process adopted by Revenue hence does not have a legal basis.

6. As regards the allegation of violation of the Principles of Natural Justice made by the appellant, it was contended by the Ld. AR that none of the noticees' submitted their final reply nor attended any of the four opportunities for PH given to them hence there has been no violation of natural justice. It is to be stated that although the law prescribes a minimum number of hearings before the matter is adjudicated, the circumstance under which the matter was decided ex parte needs to be examined as there is no straight jacket formula in such situations.

6.1 It is stated by the appellant that they had made a pre-deposit and requested time for approaching the Settlement Commission as provided in Chapter XIV of the Customs Act 1962. When the Act provides for such an alternate dispute resolution mechanism the appellant cannot be denied its benefit, although this cannot be an indefinite option.

6.2 We find that the principles of natural justice are grounded on the doctrine of procedural fairness leading to a just decision. Hence the appellant could have been asked to show reasonable proof of his attempting to approach the Settlement Commission within a definite timeline. This was necessary since once the case has been adjudicated, the procedure for settlement cannot be availed. Without doing the same, a conclusion by the Ld. Lower Authority that the noticees sought extension of time to file reply to SCN only to delay the adjudication proceedings, cannot be sustained as being based on presumption.

6.3 More so the statements made by co-noticees are likely to affect the outcome of the decision against the individuals and could lead to confiscation of goods along with severe penalties. In such a situation the appellants, have an opportunity to test and assess the probative value of the evidence and statements of co-noticees / others during the PH, subject to the reasoned satisfaction of the proper officer. Natural justice hence requires that these processes are not side stepped based on statutory requirements alone but are seen to be done in the spirit of procedural fairness. The appellants hence have a reason to feel aggrieved.

7. The department has stated that the facts relating to suppression of facts and fraud have been collaborated by the statements of concerned persons recorded under Section 108 of the Customs Act,1962; that once these facts are admitted they need not be proved again, since fraud and collusion vitiate even the most solemn proceedings. We find that the Apex Court in **Sounds N Images Vs Collector of Customs** [2000 (117) E.L.T. 538 (S.C.)] examined a case of alleged under valuation and held as under;

> *"5. A fax message setting out a quotation by one party in Singapore to another party in Singapore cannot be made the basis of valuation of goods imported into India, particularly so when the importer's request to be allowed to cross-examine the alleged offendor is declined. <u>It is always for the Customs authorities to establish by methods known to law and in a satisfactory manner that the value of imported goods is not what the importer says it is and what that value actually is. That onus cannot be shifted to the importer. We have no doubt that all this has been said by the courts again and again, but to no avail."</u> (emphasis added)*

7.1 This process of discharging its onus by revenue, in the case of a dispute, starts by the issue of a proper Show Cause Notice under the relevant section of the Act, which is the very basis and the foundation of the entire quasi-judicial proceedings initiated by it. Since the assessments were provisional, action should have been taken to finalise them first as per the scheme of CA 1962. However, we find that the notice alleging shortfall in payment of duty due to fraud and suppression was prematurely issued and incorrect legal provisions invoked.

7.2 The proceedings hence stand vitiated for the simple reason that assessees have a right to know in clear and unambiguous terms the exact nature of their liability in terms of the correct legal provisions so as to defend their case. For example in the case of imports under Indo-Sri Lanka Free Trade agreement where the values declared for the impugned goods were certified by 'The National Chamber of Commerce of Sri Lanka' and were subsequently contested by revenue, unless the verification process as set out in the Indo-Sri Lankan Free Trade Agreement was undertaken with the foreign government and the certificate found defective/ withdrawn and intimated to the assessee, the declared value could not have been alleged to be fraudulent. This omission draws attention to the importance of adhering to the provisions of Trade Agreements and ensuring that proper verification procedures are followed. Without that exercise the conclusion of revenue regarding fraud and under valuation with respect to the concerned BE's is unsound and the question remains as to why the provisional assessment could not be finalized as declared based on the certification. Moreover, in the case of the imported goods covered by Annexure II of the SCN it is admitted in the SCN that there is no direct evidence available to challenge the declared value. Such a situation also warranted that the assessments be examined and finalised under the relevant section and valuation rules first before arriving at a conclusion of fraud, suppression etc. and thereby evoking section 28 to demand the short paid duty along with punitive provisions, if at all.

7.3 Its only after final assessment that the relevant date for issue of a notice to recover duty which has not been levied or has been short levied etc. involving fraud, if any, becomes operative. By issuing a legally defective notice, the opportunity to examine the probative value of the documents including statements on which reliance was placed by the department, in support of its allegations, was lost. The judgments cited by revenue regarding fraud are hence not found relevant in the peculiar facts of this case.

8. We also find that there have been a number of judgments of Constitutional Courts giving clarity on this issue.

8.1 The Hon'ble Supreme Court in **Canon India Pvt. Ltd. Vs Commissioner of Customs** [2021 (376) E.L.T. 3 (S.C.) held that the nature of the power to recover the duty, not paid or short paid after the goods have been assessed and cleared for import, under section 28 of CA 1962, is broadly a power to review the earlier decision of assessment. Hence the section comes into play only when assessment is final. The relevant portion of the judgment reads as follows:

> *"12. The nature of the power to recover the duty, not paid or short paid after the goods have been assessed and cleared for import, is broadly a power to review the earlier decision of assessment. Such a power is not inherent in any authority. Indeed, it has been conferred by Section 28 and other related provisions. The power has been so conferred specifically on ‗the proper officer‖ which must necessarily mean the proper officer who, in the first instance, assessed and cleared the goods i.e. the Deputy Commissioner Appraisal Group."*
>
> *(emphasis added)*

8.1 In the case of **AS Syndicate (Warehousing) P. Ltd. Vs Commissioner of Customs (Port)** [2009 (12) TMI 609-CALCUTTA HIGH COURT)], the Hon'ble High Court had an occasion to analyse the issue as to whether the demand under Section 28 of the Customs Act, 1962 can be raised before the finalization of assessment. The Hon'ble High Court after referring to the analogous provisions under Rule 9-B(1) of Central Excise Rules, 1944, held that there being no final assessment, the demand-cum Show Cause Notice is without jurisdiction and quashed the same. The relevant Paragraphs reads as under:-

> *"4. Between March, 1997 and October, 2000, consignments of the said goods imported by the petitioners, covered by 54 bills of entry, were provisionally assessed under Heading 21.06 as per the order of the Commissioner of Customs (Port) in File No. S202 Gr. I (P) 29/97A dated 27th March, 1997.*
>
> ******. *****. ******
>
> *6. Even before finalization of assessment, a demand-cum-show cause notice dated 4th July, 2001 was issued to the petitioners under Section 28 of the Customs Act, 1962, inter alia demanding Rs. 4,15,03,279/- along with penalty and interest.*
>
> *<u>7. The short question involved in this writ application is whether any show cause notice under Section 28 of the Customs Act, 1962 can be issued, unless there has been final assessment.</u>*
>
> ******. *****. ******
>
> *18. The submission of the respondents, that what is relevant is the substance of the show cause notice and not its form, may be correct. It is, however, difficult to accept the argument that the show cause notice is, for all practical purposes, under Section 18 of the Customs Act, 1962.*
>
> *19. As rightly argued by Counsel appearing on behalf of the petitioners, there is no provision for issuance of show cause notice for finalization of assessment. Moreover, it is patently clear that a demand in terms of Section 28(1) has been raised. The nomenclature also shows that the impugned notice is a demand-cum- show cause notice.*
>
> *20. The argument that by the impugned show cause notice, the petitioners were only given an opportunity to make their submissions before final assessment, cannot be accepted, since the petitioners*

> *have also been directed to show cause why the goods should not be held confiscable and why penalty should not be imposed. There could be no question of confiscation, penalty or interest till after final assessment."*
>
> *(emphasis added)*

8.2 The Hon'ble High Court of Bombay in the case of **Commissioner of Customs (Import), Mumbai Vs Mahesh India** [2006 (7) TMI 306 - BOMBAY HIGH COURT] held that the Show Cause Notice issued under Section 28 when the goods have not been finally assessed is bad in law and not maintainable. The relevant Paragraphs reads as under:-

> *"2. The dispute in the present case pertains to the show cause notice issued by the Directorate of Revenue Intelligence unit of the customs department ("D.R.I." for short) on 22-3-93 in respect of the goods admittedly cleared on provisional assessment basis.*
>
> *3. By an order-in-original dated 9th February, 1996, the Commissioner of Customs, Mumbai had held that the above show cause notice issued by DRI was bad in law because the goods were provisionally assessed and moreover final assessment order has been passed on 22-6-94 that is after the impugned snow cause notice by DRI.*
>
> ******. *****. ******
>
> *6. It is true that in the light of the Judgment of this Court in the case of **Electron Textile Exports (P) Ltd. & Anr.** (supra), the findings recorded by the Tribunal that the officers of D.R.I. are not entitled to issue show cause notice under Section 28 and 124 of the Customs Act cannot be sustained. However, in view of the finding given by the Tribunal that on the date on which the impugned show cause notice was issued, the goods were provisionally assessed, the impugned notice was not maintainable. Therefore, even if the D.R.I, had jurisdiction to issue show cause notice, in the facts of the present case, <u>since the goods were provisionally assessed, there could not be any short levy and consequently show cause notice on the ground of short levy could not be issued</u>."*
>
> *(emphasis added)*

8.3 The Hon'ble High Court of Calcutta in the case of **Jaju Petro Chemical Pvt. Ltd. & Another Vs. Commissioner of Customs (Port) & Others** [2017 (354) ELT 614 (Cal) / 2017 (7) TMI 633 - CALCUTTA HIGH COURT], considered the issue with regard to the demand raised under Section 28 of the Customs Act, 1962 when the assessment was only provisional. It was observed that when the duty to be paid is yet to be finalised the importer cannot be saddled with the guilt of not paying the duty or short paying the duty. The relevant Paragraph reads as under:-

> *"2. Learned advocate for the petitioner submits that, the petitioner had imported certain materials into India. The petitioner had applied under Section 18(1) of the Customs Act, 1962. The application under Section 18(1) of the Act of 1962 has not been finally adjudicated upon under Section 18(2) of such C/40144/2019 Act. Without a final adjudication under Section 18(2) of the Act of 1962, the authorities have sought to invoke Section 28 of the Act of 1962, read with Section 124 thereof. He submits that, the authorities are entitled to invoke Section 28 of the Act of 1962, if and only if, the petitioner is guilty of not paying the levy or short- paying the same or for the reasons specified in Section 28 thereof. None of the grounds available to invoke Section 28 of the Act of 1962 exists in the facts of the present case. The levy payable by the petitioner is yet to be adjudicated upon, for the petitioner to have defaulted in payment of the same and Section 28 being invoked.*
>
> ******. *****. ******
>
> *15. The petitioner had imported what is claimed to be slack wax. DRI had initiated an investigation on the suspicion of undervaluation. Such investigation conducted by DRI was commodity specific rather than importer specific. This fact appears from the impugned show cause notice as also the affidavits of the authorities.*
>
> *16. The records made available to Court establish that, the petitioner had applied under Section 18(1) for the purpose of assessment. Section 18(1) of the Customs Act, 1962 permits the importer, where he is unable to make self-assessment, to make a request to the proper officer for assessment. In the present case, the petitioner had done so. Under Section 18(2) of the Act of 1962, it is the duty of the officer concerned to inform the duty leviable on the goods imported as finally assessed. In the present case, a final assessment of the duty has not happened. Nothing has been placed on record to suggest otherwise. <u>The Customs Authorities have invoked Section 28 of the Act of 1962 without a final order of assessment. Section 28 of the Act of 1962 allows the Customs Authorities to recover duties not levied or short- levied or erroneously refunded. In the present case, none of the situations contemplated under Section 28 has arisen. The duty is yet to be finally assessed for the petitioner to be said to be guilty of not paying the duty or paying short-levy of the duty payable.</u> The question of refund does not arise at all. Therefore, a failure contemplated under Section 28 of the Act of 1962 not happening, the authorities should not have invoked Section 124 of the Act of 1962. Section 124 of the Act of 1962 allows issuance of show cause notice before confiscation of goods."*
>
> *(emphasis added)*

8.4 We also find that a Coordinate Bench of this Tribunal in the case of **Lan Esenda Ltd. Vs. Commissioner of Customs, Mumbai** [2005 (192) ELT 305 (Tri.- Mumbai)] held that the penalties imposed alleging under valuation of goods before finalisation of assessment cannot sustain. A similar issue has also been recently examined by a Coordinate Bench of this Tribunal in **M/s. Shell India Markets Private Limited Vs Commissioner of Customs, Chennai** [2024 (3) TMI 1189 - CESTAT CHENNAI]. The judgment relied upon the case of **AS Syndicate (Warehousing) P. Ltd.** (supra).

8.5 In the hierarchical judicial system like ours, the norm is that wisdom of the Tribunal has to yield to the higher wisdom of the Constitutional Courts above. Further it is also a well-accepted norm of judicial discipline that a Bench of co-equal strength must follow the earlier decision of another Bench of co-equal strength, more so when it is based on the judgments of superior courts.

9. Based on the discussions above, we have no hesitation in setting aside the impugned order and allowing the appeals. Once the demand itself fails the appropriation of deposits towards duty, the penalties imposed on the appellants and the confiscation of the goods also fail. The appellants are eligible for consequential relief as per law. The appeals are disposed of accordingly.

(Pronounced in open court on 09.07.2024)

(**M. AJIT KUMAR**) Member (Technical)	(**P. DINESHA**) Member (Judicial)

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